

By: Gallegos

S.B. No. 1693

A BILL TO BE ENTITLED

AN ACT

relating to enforcement of certain provisions in construction contracts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 138 to read as follows:

CHAPTER 138. CERTAIN PROVISIONS IN CONSTRUCTION CONTRACTS

Sec. 138.001. DEFINITION. In this chapter, "construction contract" means a contract or agreement entered into or made by an owner, contractor, subcontractor, or supplier concerning the construction, alteration, repair, troubleshooting, or maintenance of a building, structure, appurtenance, or other improvement to or on real property, including moving, demolition, and excavation connected with the real property.

Sec. 138.002. AGREEMENT VOID AND UNENFORCEABLE. A provision, promise, understanding, or covenant contained in, collateral to, or affecting a construction contract is void and unenforceable to the extent that it provides or purports to provide to the indemnitee defense or indemnity, or both, against loss or liability that:

(1) is caused by or results from the sole or concurrent negligence or fault, including strict liability, of the indemnitee, an agent or employee of the indemnitee, or an independent contractor directly responsible to the indemnitee; and

1 (2) arises or results from:

2 (A) death or bodily injury to a person;

3 (B) damage to property;

4 (C) a fine, penalty, administrative action, or
5 other action by a governmental entity; or

6 (D) any other loss, damage, or expense that
7 arises from an occurrence described by Paragraph (A), (B), or (C).

8 Sec. 138.003. EFFECT ON INSURANCE POLICY. (a) An insurance
9 policy provision or endorsement that would frustrate or circumvent
10 the prohibitions of this chapter, including a waiver of subrogation
11 and an additional named insured endorsement, is void and
12 unenforceable to that extent, and the policy may apply only to
13 damages arising from the negligence of the person who is the named
14 insured in the policy.

15 (b) A provision, promise, understanding, or covenant in a
16 construction contract requiring an insurance policy provision or
17 endorsement that would frustrate or circumvent the prohibitions of
18 this chapter, including the payment of all or a portion of an
19 indemnitor's insurance premium by an indemnitee, is also void and
20 unenforceable.

21 (c) Except as provided by this section, this chapter does
22 not affect the validity of an insurance policy or contract or a
23 benefit conferred by the workers' compensation laws of this state.

24 Sec. 138.004. WAIVER PROHIBITED. The provisions of this
25 chapter may not be waived by contract or otherwise.

26 Sec. 138.005. CONFLICT OF LAWS. A covenant, promise,
27 agreement, or understanding that is contained in or collateral to

1 or that affects a construction contract or a related insurance
2 policy provision or endorsement and that provides that the law of
3 another state will apply to the contractual relationship between
4 the indemnitor and the indemnitee is against public policy and void
5 if:

6 (1) the premises where the labor is performed or the
7 materials are delivered under the contract are in this state or its
8 territorial reach; or

9 (2) the contract was negotiated in whole or in part in
10 this state.

11 Sec. 138.006. APPLICABILITY OF OTHER LAW. This chapter
12 prevails over any other law that conflicts with or is inconsistent
13 with this chapter.

14 SECTION 2. (a) This Act applies to a construction contract
15 entered into or renewed on or after the effective date of this Act
16 and to any specific, terminable performance of a specific job or
17 activity begun under a construction contract after the effective
18 date of this Act, including performance under a master or general
19 service agreement, a blanket or maintenance contract, or any
20 similar agreement or contract that purports to provide indemnity to
21 the indemnitee for all or part of the work performed, in whatever
22 form and by whatever name, regardless of whether the agreement or
23 contract was entered into or renewed before the effective date of
24 this Act.

25 (b) A construction contract entered into or renewed before
26 the effective date of this Act and any job or activity under the
27 contract begun before the effective date of this Act is governed by

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1 the law in effect immediately before the effective date of this Act,
2 and that law is continued in effect for that purpose.

3 SECTION 3. This Act takes effect September 1, 2003.